

Wall Street Journal Article Rebuttal

Dear Editors:

Medicaid Maneuvers gives readers the quality of advice on par with counseling them to keep their money in their mattresses. All rewards entail a certain amount of risk, but a good elder law attorney can help minimize that risk, just as a good financial planner can minimize the risk of venturing beyond the mattress, or even beyond passbook savings accounts.

I cannot speak for other parts of the country, but in Florida approximately 80% of all nursing home residents are Medicaid recipients. A huge distinction between Medicaid and private pay simply does not exist: Facilities that accept Medicaid patients are not “dumps.” Residents who have a hospital stay will likely come out under Medicare and have even more choices than when they went in because these patients are extremely profitable.

In Florida, our nursing home laws do in fact pay for home care and assisted living. Both of these choices are cost-effective alternatives, and our state legislature has been astute enough to recognize them as such. If your state does not, perhaps it is time to have a talk with your local legislator. If your legislators are instead “cracking down on loopholes” isn’t that all the more reason to consult an experienced planner, rather than give up on asset protection? Would you advise businesses to throw in the towel just because the tax laws changed, or would you suggest they seek expert advice?

An experienced planner will help you navigate the Medicaid landmines, since there are in fact incorrect ways to transfer assets that will result in lengthy delays, problems for your children, and potentially invalid documents. Correct ways exist, however, and these ways vary from state to state depending on the laws involved. In Florida, for example, good planning allows parents to keep their homestead exemption and pass the property to their children after death. Careful, well-considered documents will avoid problems that could cause undesirable consequences for parents or for their children.

Proper selection of an elder law attorney can avoid many pitfalls, not just in the soundness of the final documents, but in the management of potential conflicts. As with any legal situation, consumers should ask questions to determine what role the advisor is playing in the transaction. Beyond that, an experienced elder law attorney, knowing this practice area is rife with potential conflict, takes a proactive approach to identify problems. He or she knows how to spot difficulties during the earliest stages of representation and has the ability to delicately and tactfully clarify the situation, suggesting separate counsel when necessary.

Both good and bad advisors exist in every field. A better service to your readers would be outlining how to find quality Medicaid planning advice, as you would suggest they find any other financial planning advice, rather than scaring them away from long-term care planning.

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